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Crl.OP.No.7989 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.OP.No.7989 of 2024

and

Crl.MP.Nos.5803 and 5804 of 2024

1. T.Vijayaragavan
2. T.Thangamani

... Petitioners

Vs.

K.Subramanian
Rep by his Power Agent/Manager/Accountant
S.Loganathan

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records and to quash the complaint filed in S.T.C.No.425 of 2023 on the file of Fast Track Judicial Magistrate No.1, Erode under Section 200 of Cr.P.C r/w 138 of Negotiable Instruments Act with regard to the petitioners.

For Petitioners : Mr.C.S.Saravanan

For Respondent : Mr.Mohamed Riyaz
for Mr.K.Muthu Ganesa Pandian



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ORDER

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2. The learned counsel for the petitioner submits that the company by name M/s.Thangavel Fabrics Private Ltd., is managed by the 1st accused and 2nd and 3rd accused in the complaint who are the father and brother of the 1st petitioner and husband and son of the 2nd petitioner. Being the family members, they were shown as Managing Director and Directors of the Company. However, they have no knowledge about the issuance of the subject cheque and therefore they cannot be held vicariously liable under Section 141 of Negotiable Instruments Act.

3. This Court on perusal of the cheques which is subject matter of the complaint find that five of them were signed by V.T.Jayachandran, who is the 3rd accused and two cheques were signed by Thangavel, who is



the 2nd accused. No doubt, they are related to these petitioners as stated above, but, the said complaint does not disclose how these two petitioners had knowledge about the issuance of cheque or whether they were actively participated in the day to day affairs of the company. Therefore, this Court finds that following the dictum laid down by the Hon'ble Supreme Court in **S.P.Mani & Mohan Dairy** case, the Hon'ble Supreme Court summed up their conclusion on vicarious liability under Section 141 of N.I Act and the scope of Section 482 of Cr.P.C to quash the complaint as below:-

58.Our final conclusions may be summarised as under:

58.1. The primary responsibility of the complainant is to make specific averments in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no legal requirement for the complainant to show that the accused partner of the firm was aware about each and every transaction. On the other hand, the first proviso to sub-section (1) of Section 141 of the Act clearly lays down that if the accused is able to prove to the satisfaction of the Court that the offence was committed without his/her knowledge or he/she had exercised due diligence to prevent the commission of such offence, he/she will



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not be liable of punishment.

58.2. *The complainant is supposed to know only generally as to who were in charge of the affairs of the company or firm, as the case may be. The other administrative matters would be within the special knowledge of the company or the firm and those who are in charge of it. In such circumstances, the complainant is expected to allege that the persons named in the complaint are in charge of the affairs of the company/firm. It is only the Directors of the company or the partners of the firm, as the case may be, who have the special knowledge about the role they had played in the company or the partners in a firm to show before the Court that at the relevant point of time they were not in charge of the affairs of the company. Advertence to Sections 138 and Section 141, respectively, of the NI Act shows that on the other elements of an offence under Section 138 being satisfied, the burden is on the Board of Directors or the officers in charge of the affairs of the company/partners of a firm to show that they were not liable to be convicted. The existence of any special circumstance that makes them not liable is something that is peculiarly within their knowledge and it is for them to establish at the trial to show that at the relevant time they were not in charge of the affairs of the company or the firm.*

58.3. *Needless to say, the final judgment and*



order would depend on the evidence adduced. Criminal liability is attracted only on those, who at the time of commission of the offence, were in charge of and were responsible for the conduct of the business of the firm. But vicarious criminal liability can be inferred against the partners of a firm when it is specifically averred in the complaint about the status of the partners “qua” the firm. This would make them liable to face the prosecution but it does not lead to automatic conviction. Hence, they are not adversely prejudiced if they are eventually found to be not guilty, as a necessary consequence thereof would be acquittal.

58.4. *If any Director wants the process to be quashed by filing a petition under Section 482 of the Code on the ground that only a bald averment is made in the complaint and that he/she is really not concerned with the issuance of the cheque, he/she must in order to persuade the High Court to quash the process either furnish some sterling incontrovertible material or acceptable circumstances to substantiate his/her contention. He/she must make out a case that making him/her stand the trial would be an abuse of process of Court.*

The complaint under Section 138 of Negotiable Instruments Act cannot be sustained as against these two petitioners. The case against these two



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petitioners arrayed as A4 and A5 stands quashed. The trial Court is directed to complete the trial as against the other accused persons as expeditiously as possible.

4. Accordingly, this Criminal Original Petition is allowed. Consequently, the connected miscellaneous petitions are closed.

22.07.2024

Vv

To

1. The Fast Track Judicial Magistrate No.1,
Erode
- 2.The Public Prosecutor,
High Court of Madras,
Chennai.

Dr.G.JAYACHANDRAN,J.



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